

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JEFFREY SMITH, et al.,

Case No. 1:10-cv-718

Plaintiffs,

Dlott, J.
Bowman, M.J.

v.

INDIAN HILL EXEMPTED VILLAGE
SCHOOL DISTRICT, et al.,

Defendants.

ORDER

On October 15, 2010, Plaintiff Jeffrey Smith initiated this litigation *pro se* on behalf of himself and his daughter ("JMS"). On May 5, 2011, I filed a Report and Recommendation that recommended that all of the Defendants' motions to dismiss be granted, that several motions filed by Plaintiff be denied, and that the entirety of Plaintiffs' complaint be dismissed with prejudice. (Doc. 31). On September 16, 2011, the presiding district judge adopted the Report and Recommendation, with one exception regarding the issue of attorney's fees.

Based upon the Court's determination that Plaintiffs' frivolous motion practice had demonstrated "continued harassment of the defendants," and finding that "only an award of sanctions will deter these harassing frivolous motions," (Doc. 50 at 2), the Court granted the School District Defendants' request for an award of fees. (*Id.* at 3). In response to the Court's order, the School District filed a formal motion for attorney's fees (Doc. 53), setting

forth the basis for an award of fees and costs. On October 31, 2011, the School District Defendants filed a supplemental memorandum setting forth the basis for an award in the amount of \$34,136.00. (Doc. 63).

While the fee petition was pending, Plaintiff Jeffrey Smith appealed virtually all rulings of this Court to the Sixth Circuit Court of Appeals. (Doc. 66). For reasons of judicial economy, including the fact that Defendants might seek an additional fee award if the Sixth Circuit affirmed the rulings of this Court, the Court denied Defendants' motion for fees, but without prejudice to renew upon the conclusion of the then-pending appeal. (Docs. 69, 71). In so doing, the Court noted that the Defendants' motion for an award of \$34,136.00 was both "well-supported" and "unopposed," except for Plaintiff's underlying appeal. (*Id.*).

On August 13, 2012, the Sixth Circuit Court of Appeals denied Plaintiff's appeal and affirmed the judgment of this Court. On August 23, 2012, Defendants renewed their motion for an award of attorney's fees, indicating that a plan to supplement -at an unspecified date- "the evidence supporting its original Motion with Affidavits setting forth the up-dated reasonable attorney fees and costs." (Doc. 73). To date, Plaintiff has filed no response to Defendants' renewed motion.

Accordingly, **IT IS ORDERED THAT:**

1. On or before **September 24, 2012**, Defendants may supplement their renewed motion for attorney's fees (Docs. 53, 63), to the extent that they seek to recover a sum greater than the sum of \$34,136.00, previously submitted on October 31, 2011;
2. On or before **October 8, 2012**, Plaintiff may file a response in opposition, showing cause as to why any properly supported application for fees should not be

awarded in full;

3. Defendants may file any reply in support of their requested fee award on or before **October 17, 2012**, after which this matter will stand as fully submitted.

s/ Stephanie K. Bowman

Stephanie K. Bowman
United States Magistrate Judge